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INTERSTATE COMMERCE COMMISSION

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CONDITIONAL SALE AGREEMENT

Dated as of April 1, 1971

Among

BURLINGTON EQUIPMENT COMPANY  
as Manufacturer

D. E. MUNDELL and BEN MAUSHARDT  
as Trustees under Trust Agreement dated as of April 1, 1971

UNITED STATES LEASING INTERNATIONAL, INC.  
as Agent for the Trustees

and

BURLINGTON NORTHERN, INC.  
as Guarantor

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B.N. Trust No. 3

CONDITIONAL SALE AGREEMENT, dated as of April 1, 1971 among BURLINGTON EQUIPMENT COMPANY, an Illinois Corporation ("Manufacturer"), D. E. MUNDELL and BEN MAUSHARDT, not in their individual capacities but solely as Trustees ("Trustee") under Trust Agreement dated as of April 1, 1971 ("Trust Agreement"), UNITED STATES LEASING INTERNATIONAL, INC., a California corporation, as Agent for the Trustee ("Agent") and BURLINGTON NORTHERN, INC, a Delaware corporation ("Guarantor").

WHEREAS, the Manufacturer has agreed to reconstruct and to build and deliver to the Trustee, and the Trustee is willing to purchase, the railroad equipment described in Schedules A-1 through A-6 respectively, attached hereto (collectively the "Equipment" and individually "Unit of Equipment"); and

WHEREAS, the Trustee is executing a lease of the Equipment dated as of the date hereof (the "Lease"), to the Guarantor, subject to this Agreement, in the form attached as Exhibit B to the Trust Agreement covering the Equipment and the Guarantor is willing to guarantee to the Manufacturer the due and punctual payment of all sums payable by, and the due and punctual performance of all other obligations of, the Trustee under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth; and

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

#### SECTION 1. CONSTRUCTION AND SALE.

The Manufacturer will reconstruct, sell and deliver to the Trustee, and the Trustee will purchase from the Manufacturer and accept delivery of and pay for as hereinafter provided, the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in said Schedules A-1 through A-6 and such modifications thereof as may be agreed upon in writing by the Guarantor and the Manufacturer (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design and quality of equipment and material in such Units shall conform to all Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads, interpreted as being applicable to railroad equipment of the character of such Units as of the date of this Agreement.

## SECTION 2. DELIVERY.

2.1. The Manufacturer will deliver the various Units of Equipment to the Trustee in accordance with the delivery schedule set forth in said Schedules A-1 through A-6.

2.2. The Manufacturer's obligations as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riots or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

2.3. Notwithstanding the foregoing provisions, the Trustee shall not be obligated hereunder to accept and pay for any Equipment not delivered and accepted on or before March 1, 1972. Any Equipment not so delivered and accepted shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Manufacturer shall remain obligated to construct, sell and deliver to the Guarantor, and the Guarantor shall remain obligated to purchase from the Manufacturer, accept delivery of and pay for, any of the Equipment thus excluded from this Agreement, and the Guarantor, the Trustee, the Agent and the Manufacturer shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not excluded herefrom, and the Manufacturer and the Guarantor shall further execute a separate agreement providing for the sale of such excluded Equipment by the Manufacturer to the Guarantor upon the same terms and conditions as those contained herein, modified only to the extent necessary to provide for payment in cash upon delivery of the Equipment, either directly or indirectly by means of a conditional sale agreement, equipment trust or other appropriate method of financing as the Guarantor may determine.

2.4. The Equipment during construction shall be subject to inspection by an inspector or other authorized representative of the Guarantor. Acceptance of the Equipment by the Guarantor under the Lease shall be deemed to be acceptance of the Equipment by the Trustee, and the Trustee agrees to cause the Guarantor to furnish the Certificates of Acceptance under the Lease to the Manufacturer in such number of counterparts as may be reasonably requested.

2.5. The Manufacturer shall bear the risk of loss thereof or damage thereto until delivery to and acceptance by the Trustee, as evidenced by acceptance by the Guarantor under the Lease. Upon such delivery and acceptance by the Trustee of each of such Units of Equipment, the Trustee (as between the Manufacturer and the Trustee) shall bear the risk of loss of or damage to such Units.

### SECTION 3. PURCHASE PRICE AND PAYMENT.

3.1. The "purchase price" per unit of the Equipment, including freight charges, if any, to place of delivery, but exclusive of interest, insurance and all other charges, is the unit price of reconstructed equipment as set forth in the Schedules attached hereto.

3.2. For the purpose of making settlement for the Equipment, the Equipment shall be divided into groups of units of the Equipment (each such group of units being hereinafter called a "Group"). Each Group is to consist of such number of units of Equipment delivered to and accepted by the Trustee, which shall consist of not less than 250 units except (i) the final Group may contain a smaller number of units, (ii) on assignment of this Agreement, any Group may contain a smaller number of units on consent of the assignee, and (iii) in the event there shall have been delivered to and accepted by the Trustee a unit or units of Equipment and the Manufacturer shall be prevented from delivering additional units on or before March 1, 1972, be delays resulting from causes beyond their reasonable control as hereinabove provided, such units of Equipment then delivered and accepted shall constitute a Group for the purposes of settlement.

3.3. The Trustee hereby acknowledges itself to be indebted to the manufacturer in the amount of, and hereby promises to pay to the Manufacturer at such bank or trust company in the United States of America as the Manufacturer or its assignee shall designate for payment to it, the purchase price of the units of the Equipment as follows:

(a) On the Closing Date an amount equal to 20% of the aggregate purchase price for all units of Equipment in the Group:

(b) An amount equal to the difference between the aggregate purchase price of the Equipment and the aggregate amount paid pursuant to subparagraph (a) of this Section 3.3 (herein sometimes called the "Conditional Sale Indebtedness") payable as follows:

Casualty Payment (as herein defined) of Units of Equipment having suffered a Casualty Occurrence (exclusive of Units of Equipment having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Manufacturer thereof pursuant to this Section) shall exceed \$100,000, the Trustee, on the date of payment of the next succeeding installment of such indebtedness, shall pay to the Manufacturer the Casualty Payment of such Unit as of the date of such payment; provided, that notwithstanding the foregoing the Trustee shall on the last installment payment date of each calendar year pay to the Manufacturer a sum equal to the Casualty Payment of any unit or units of Equipment which have suffered a Casualty Occurrence during such calendar year or any prior year for which no payment has previously been made to the Manufacturer pursuant to this Section 6.1. Each such payment shall be accompanied by notification from the Trustee as to the Casualty Payment.

6.2. The Manufacturer, shall, immediately upon receipt thereof, apply the money deposited pursuant to Section 6.1 to the prepayment of the indebtedness in respect of the purchase price of the Equipment having suffered a Casualty Occurrence, plus interest then accrued on the portion thereof so prepaid, but without premium. The semi-annual payments of the indebtedness in respect of the purchase price of the remaining Equipment and interest thereon, becoming due thereafter shall be redetermined on the basis of the amount of such indebtedness remaining unpaid and on the basis of the number of semi-annual payments remaining immediately after such application.

6.3. Upon payment to the Manufacturer of the Casualty Payment in respect of a Unit of Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such Unit shall automatically pass to and vest in the Trustee without further transfer or action on the part of the Manufacturer. The Manufacturer, if requested by the Trustee, will execute and deliver to the Trustee, at its address specified in Section 21 hereof, at the expense of the Trustee, appropriate instruments confirming such passage to the Trustee of title to and property in such Unit free of all liens and encumbrances created or retained hereby, in recordable form in order that the Trustee may make clear upon the public records the title of the Trustee to such Unit.

6.4. The Casualty Payment in respect of each Unit of Equipment having suffered a Casualty Occurrence shall be deemed to be that portion of the original purchase price thereof remaining unpaid on the date as of which such Casualty Payment shall be determined, plus interest accrued thereon but unpaid as of such date.

6.5. In the event that prior to March 1, 1982, the use of any Unit of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for a period ending prior to said date, the Trustee's duty to pay the indebtedness in respect of the purchase price thereof shall continue for the duration of such requisitioning or taking. The Trustee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

#### SECTION 7. OBLIGATIONS OF GUARANTOR.

7.1. The Guarantor, for value received, hereby unconditionally guarantees to the Manufacturer the due and punctual performance of all obligations of the Trustee under this Agreement and unconditionally guarantees to the Manufacturer that all sums payable by the Trustee under this Agreement (including, but not limited to, all sums payable by the Trustee with respect to the purchase price of the Equipment) will be promptly paid when due in accordance with the provisions of this Agreement, together with interest thereon as herein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Trustee in any such obligations or payment the Guarantor agrees punctually to perform or pay the same, irrespective of any enforcement against the Trustee of any of the rights of the Manufacturer hereunder.

7.2. The Guarantor hereby agrees that its obligations hereunder shall be unconditional, irrespective of the genuineness, validity, regularity or enforceability of this Agreement or any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor or limit the recourse of the Manufacturer against the Trustee. The Guarantor hereby waives diligence, presentment, demand for payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Manufacturer of any of its rights hereunder and no action by the Manufacturer to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder.

7.3. The Guarantor hereby covenants and agrees with the Manufacturer, for the benefit of the Manufacturer, faithfully to observe all the terms, covenants and conditions set forth in the Lease and to perform all obligations of the Guarantor thereunder, it being agreed that the undertakings of the Guarantor pursuant to the Lease shall be deemed a part of this Agreement with the same force

and effect as if set forth herein in full. The obligations of the Guarantor under the provisions of the preceding sentence shall not be affected by any termination of the Lease or the invalidity thereof, as between the Trustee and the Guarantor, for any reason but shall continue as though the Lease continued in full force and effect until the indebtedness in respect of the purchase price of the Equipment, together with interest thereon, shall have been paid in full.

7.4. The Guarantor agrees that, at its own cost and expense, it will maintain and keep each Unit of Equipment in good order and repair, ordinary wear and tear excepted. The Guarantor agrees that during the period that any portion of the indebtedness in respect of the purchase price of the Equipment remains outstanding and unpaid, the Guarantor will not assign any Unit of Equipment to service involving the regular operation and maintenance thereof outside the United States of America.

7.5. In the event that the Guarantor shall make any payments to the Manufacturer on account of its guaranty hereunder, the Guarantor hereby covenants and agrees that it shall not acquire any rights, by subrogation or otherwise, against the Trustee or with respect to any of the Units of Equipment by reason of such payments, all such rights being hereby irrevocably released discharged and waived by the Guarantor; provided, however, that after the payment by the Guarantor to the Manufacturer of all sums payable under this Agreement, the Guarantor shall, by subrogation, be entitled to the rights of the Manufacturer against the Trustee by reason of such payment, to the extent, but only to the extent, that the Trustee has received income and proceeds from the Equipment and has not applied such income and proceeds to the payment, in accordance with this Agreement, of sums payable by the Trustee to the Manufacturer hereunder.

#### SECTION 8. REPORTS AND INSPECTIONS.

On or before May 1 in each year, commencing with the year 1972, the Guarantor will furnish to the Manufacturer, concurrently with the transmission thereof to the Trustee, copies of each and every report or statement to be furnished to the Trustee by the Guarantor pursuant to Section 12 of the Lease. The Manufacturer shall have the right, by their agents, to inspect the Equipment and records of the Trustee and the Guarantor with respect thereto once in every year.

## SECTION 9. POSSESSION AND USE.

9.1. The Trustee, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Manufacturer to the Trustee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

9.2. Without intending any limitation of the rights of the Trustee under Section 13 hereof, the Trustee may lease the Equipment to the Guarantor or its assigns as permitted by, and for use as provided in, Section 17 of the Lease, provided, however, and the Guarantor hereby acknowledges, that the rights of the Guarantor and its permitted assigns under the Lease are subordinate and junior in rank to the rights, and are subject to the remedies, of the Manufacturer under this Agreement. A copy of any such assignment by the Guarantor shall be furnished to the Manufacturer. The Trustee hereby agrees that it will not exercise any of the remedies provided in Section 14 of the Lease unless it shall notify the Manufacturer in writing of its intended exercise thereof, and hereby further agrees to furnish to the Manufacturer, at its written request, copies of all summons, writs, processes and other documents served by it upon the Guarantor or served by the Guarantor upon it in connection therewith.

## SECTION 10. PROHIBITION AGAINST LIENS.

10.1. The Trustee will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Trustee or its successors or assigns (other than the Guarantor or its assigns) which, if unpaid, might become a lien or a charge upon any Item of Equipment equal or superior to the title of the Manufacturer, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the non-payment thereof does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder.

10.2. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent (such liens being herein called permitted liens).



6.5. In the event that prior to March 1, 1982, the use of any Unit of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for a period ending prior to said date, the Trustee's duty to pay the indebtedness in respect of the purchase price thereof shall continue for the duration of such requisitioning or taking. The Trustee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

#### SECTION 7. OBLIGATIONS OF GUARANTOR.

7.1. The Guarantor, for value received, hereby unconditionally guarantees to the Manufacturer the due and punctual performance of all obligations of the Trustee under this Agreement and unconditionally guarantees to the Manufacturer that all sums payable by the Trustee under this Agreement (including, but not limited to, all sums payable by the Trustee with respect to the purchase price of the Equipment) will be promptly paid when due in accordance with the provisions of this Agreement, together with interest thereon as herein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Trustee in any such obligations or payment the Guarantor agrees punctually to perform or pay the same, irrespective of any enforcement against the Trustee of any of the rights of the Manufacturer hereunder.

7.2. The Guarantor hereby agrees that its obligations hereunder shall be unconditional, irrespective of the genuineness, validity, regularity or enforceability of this Agreement or any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor or limit the recourse of the Manufacturer against the Trustee. The Guarantor hereby waives diligence, presentment, demand for payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Manufacturer of any of its rights hereunder and no action by the Manufacturer to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder.

7.3. The Guarantor hereby covenants and agrees with the Manufacturer, for the benefit of the Manufacturer, faithfully to observe all the terms, covenants and conditions set forth in the Lease and to perform all obligations of the Guarantor thereunder, it being agreed that the undertakings of the Guarantor pursuant to the Lease shall be deemed a part of this Agreement with the same force

and effect as if set forth herein in full. The obligations of the Guarantor under the provisions of the preceding sentence shall not be affected by any termination of the Lease or the invalidity thereof, as between the Trustee and the Guarantor, for any reason but shall continue as though the Lease continued in full force and effect until the indebtedness in respect of the purchase price of the Equipment, together with interest thereon, shall have been paid in full.

7.4. The Guarantor agrees that, at its own cost and expense, it will maintain and keep each Unit of Equipment in good order and repair, ordinary wear and tear excepted. The Guarantor agrees that during the period that any portion of the indebtedness in respect of the purchase price of the Equipment remains outstanding and unpaid, the Guarantor will not assign any Unit of Equipment to service involving the regular operation and maintenance thereof outside the United States of America.

7.5. In the event that the Guarantor shall make any payments to the Manufacturer on account of its guaranty hereunder, the Guarantor hereby covenants and agrees that it shall not acquire any rights, by subrogation or otherwise, against the Trustee or with respect to any of the Units of Equipment by reason of such payments, all such rights being hereby irrevocably released discharged and waived by the Guarantor; provided, however, that after the payment by the Guarantor to the Manufacturer of all sums payable under this Agreement, the Guarantor shall, by subrogation, be entitled to the rights of the Manufacturer against the Trustee by reason of such payment, to the extent, but only to the extent, that the Trustee has received income and proceeds from the Equipment and has not applied such income and proceeds to the payment, in accordance with this Agreement, of sums payable by the Trustee to the Manufacturer hereunder.

#### SECTION 8. REPORTS AND INSPECTIONS.

On or before May 1 in each year, commencing with the year 1972, the Guarantor will furnish to the Manufacturer, concurrently with the transmission thereof to the Trustee, copies of each and every report or statement to be furnished to the Trustee by the Guarantor pursuant to Section 12 of the Lease. The Manufacturer shall have the right, by their agents, to inspect the Equipment and records of the Trustee and the Guarantor with respect thereto once in every year.

## SECTION 9. POSSESSION AND USE.

9.1. The Trustee, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Manufacturer to the Trustee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

9.2. Without intending any limitation of the rights of the Trustee under Section 13 hereof, the Trustee may lease the Equipment to the Guarantor or its assigns as permitted by, and for use as provided in, Section 17 of the Lease, provided, however, and the Guarantor hereby acknowledges, that the rights of the Guarantor and its permitted assigns under the Lease are subordinate and junior in rank to the rights, and are subject to the remedies, of the Manufacturer under this Agreement. A copy of any such assignment by the Guarantor shall be furnished to the Manufacturer. The Trustee hereby agrees that it will not exercise any of the remedies provided in Section 14 of the Lease unless it shall notify the Manufacturer in writing of its intended exercise thereof, and hereby further agrees to furnish to the Manufacturer, at its written request, copies of all summons, writs, processes and other documents served by it upon the Guarantor or served by the Guarantor upon it in connection therewith.

## SECTION 10. PROHIBITION AGAINST LIENS.

10.1. The Trustee will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Trustee or its successors or assigns (other than the Guarantor or its assigns) which, if unpaid, might become a lien or a charge upon any Item of Equipment equal or superior to the title of the Manufacturer, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the non-payment thereof does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder.

10.2. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent (such liens being herein called permitted liens).

## SECTION 11. INDEMNITIES.

11.1. The Guarantor agrees to indemnify, protect and hold harmless the Manufacturer from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Manufacturer of title to the Equipment, or out of the use and operation thereof during the period when title thereto remains in the Manufacturer, or arising out of transfer of title by the Manufacturer pursuant to any provisions of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the purchase price of the Equipment and the conveyance of the Equipment, as provided in Section 4.2 hereof, or the termination of this Agreement in any manner whatsoever.

11.2. The Trustee will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any Units of or all the Equipment; provided, however, that the Manufacturer shall not be relieved from its warranty covering material and workmanship provided for in Section 11.3 hereof.

11.3. The Manufacturer warrants that the Units of Equipment to be built by it will be built in accordance with the Specifications therefor and warrants that the Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Guarantor and not manufactured by the Manufacturer, in which case the Manufacturer will assign all guarantees, if any, or warranties, as received by it from the manufacturer of the specialty and except as to articles for materials furnished by the Guarantor) or workmanship under normal use and service, the Manufacturer's obligation under this paragraph being limited to making good at its plant any part or parts of any Unit of Equipment which shall, within one year after the delivery of such Unit to the Trustee be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective; provided, however, that this warranty shall not apply to (i) any components which shall have been repaired or altered unless repaired or altered by the Manufacturer or its authorized service representatives, if, in its judgment, such repairs or alterations, affect the stability of a Unit of Equipment or (ii) any Unit of Equipment which has been subject to misuse, negligence or accident. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL

OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE MANUFACTURER, EXCEPT FOR ITS OBLIGATIONS HEREUNDER AND THE MANUFACTURER DOES NOT ASSUME OR AUTHORIZE ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE EQUIPMENT EXCEPT AS AFORESAID. The Manufacturer reserves the right to make changes in the design of, or add any improvements to, any Units of Equipment at any time with the approval of the Guarantor without incurring any obligation to make similar changes or additions in respect of other Units of Equipment previously delivered to the Guarantor. The Manufacturer further agrees with the Trustee that acceptance of any Units under Section 2 hereof shall not be deemed a waiver by the Trustee of any of its rights under this paragraph. In no event shall the Manufacturer be liable for special or consequential damages.

#### SECTION 12. PATENT INDEMNITIES.

Except in cases of designs specified by the Guarantor and not developed or purported to be developed by the Manufacturer, and articles and materials specified or furnished by the Guarantor and not manufactured by the Manufacturer, the Manufacturer agrees for itself to indemnify, protect and hold harmless the Trustee and the Guarantor from and against any and all liabilities, claims, demands, costs, charges and expenses, including reasonable royalty payments and counsel fees, in any manner imposed upon or accruing against the Trustee or the Guarantor because of the use in or about the construction or operation of the Equipment, or any Unit thereof to be built by it, of any design, article or material which infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right. The Guarantor likewise will indemnify, protect and hold harmless the Manufacturer and the Trustee from and against any and all liabilities, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Manufacturer or the Trustee because of the use in or about the construction or operation of the Equipment, or any Unit thereof, of any design specified by the Guarantor and not developed or purported to be developed by the Manufacturer, or article or material specified or furnished by the Guarantor and not manufactured by the Manufacturer, which infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right. In case the Equipment, or any Unit thereof, is held to constitute infringement and the use of the Equipment, or any Unit thereof, is enjoined, the Manufacturer shall, at its own expense and at its option, either procure for the Trustee and the Guarantor the right to continue

using said Equipment, or Unit thereof, or replace the same with non-infringing equipment, or modify it so it becomes non-infringing. Without intending any limitation of the foregoing, the Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Trustee every claim, right and cause of action which the Manufacturer has or hereafter shall have against the originator of any design or against the seller or sellers of any designs or articles or materials purchased or otherwise acquired by the Manufacturer for use in or about the construction or operation of the Equipment, or any Unit thereof, on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right and the Manufacturer further agrees to execute and deliver to the Trustee all and every such further assurance as may be reasonably requested by the Trustee, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Manufacturer will give notice to the Trustee and the Guarantor of any claim known to the Manufacturer from which liability may be charged against the Trustee or the Guarantor hereunder and the Guarantor and the Trustee will each give notice to the Manufacturer of any claim known to it from which liability may be charged against the Manufacturer hereunder. Said covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due hereunder, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

### SECTION 13. ASSIGNMENTS.

13.1. The Trustee will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Section 9.2 hereof, transfer the right to possession of any Unit of Equipment without first obtaining the written consent of the Manufacturer, which consent shall not be unreasonably withheld. No such sale, assignment or transfer shall subject the Manufacturer to any duties, obligations or liabilities whatsoever.

13.2. All or any of the rights, benefits and advantages of the Manufacturer under this Agreement, including the right to receive the payments herein provided to be made by the Trustee and the benefits arising from the undertakings of the Guarantor hereunder, may be assigned by the Manufacturer and reassigned by an assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the

obligations of the Manufacturer to construct and to deliver the Equipment in accordance with the provisions hereof or to respond to its guaranties, warranties and agreements contained herein, or relieve the Trustee or the Guarantor of their respective obligations to the Manufacturer hereunder.

13.3. Upon any such assignment either the assignor or the assignee shall give written notice to the Trustee and the Guarantor, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all of the Manufacturer's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Trustee and the Guarantor, respectively, of the notification of any such assignment, all payments thereafter to be made by the Trustee or the Guarantor hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

13.4. The Trustee and the Guarantor recognize that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understand that the assignment of this Agreement, or of some or all of the rights of the Manufacturer hereunder, is contemplated. The Trustee and the Guarantor expressly represent, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Manufacturer hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Manufacturer as hereinbefore provided the rights of such assignee to the entire unpaid indebtedness in respect of the purchase price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer with respect to the Equipment or the delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Trustee or the Guarantor by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Trustee or the Guarantor, as the case may be, against and only against the Manufacturers.

13.5. In the event of any such assignment or successive assignments by the Manufacturer of title to the Equipment and of the Manufacturer's rights hereunder with respect thereto, the Trustee

will, whenever requested by such assignee, change the names and word or words to be marked on each side of each Unit to the Guarantor, the Guarantor shall change the names and word or words to be marked on each side of such Unit, so as to indicate the title of such assignee to the Equipment with such names and word or words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such names and word or words for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such names and word or words with respect to the first assignee of this Agreement, (or to a successor agent or trustee in case the first assignee is an agent or trustee) and with respect to the Trustee shall be borne by the Manufacturer. The cost of marking such names and word or words in connection with any subsequent assignment (other than to a successor agent or trustee if the first assignee is an agent or trustee) will be borne by the subsequent assignee.

13.6. In the event of any such assignment prior to the completion of delivery of the Equipment, the Trustee will, in connection with settlement for any Group of Equipment subsequent to such assignment, deliver to the assignee, at the time of delivery by the Trustee of notice fixing the Closing Date with respect to such Group, all documents reasonably required by the terms of such assignment to be delivered by the Trustee to the assignee in connection with such settlement, in such number of counterparts as may reasonably be requested, except for any opinion of counsel for the assignee.

13.7. If this Agreement shall have been assigned by the Manufacturer and the assignee shall not make payment to the Manufacturer on the Closing Date with respect to a Group of Equipment of an amount equal to that portion of the purchase price of such Group as provided in the instrument of assignment, the Manufacturer will promptly notify the Guarantor of such event, the Group of Equipment shall be excluded thereupon and the Guarantor will not later than 90 days after the Closing Date pay or cause to be paid to the Manufacturer the purchase price of all the Equipment in such Group, or the portion thereof unpaid by the assignee, together with interest thereon from the Closing Date to the date of payment by the Guarantor at a rate per annum equal to 1% over the prime rate of interest of leading New York City banks in effect on the Closing Date, such payment to be in cash either directly or indirectly, if the Guarantor shall arrange therefor, by means of a conditional sale agreement, equipment trust, or other appropriate method of financing as the Guarantor may determine.



SECTION 14. LIMITATION OF TRUSTEE'S OBLIGATIONS.

Notwithstanding any other provision of this Agreement it is understood and agreed by the Manufacturer (and its assignee) that all amounts payable by the Trustee under and pursuant to this Agreement shall be payable only from and out of the Trust Estate (as defined in the Trust Agreement dated as of April 1, 1971, among the Trustee, the Agent and The First National Bank of Saint Paul, as Trustor) and only to the extent that the assets in the Trust Estate shall be sufficient to make such payments. The Manufacturer (and its assignee) agree that it will look solely to the Trust Estate and that it shall have no claim or right to proceed against the Trustees in their respective individual capacities, the Agent, or the Trustor under the Trust Agreement. The Manufacturer (and its assignee) by the acceptance of this Agreement waive and release the personal liability of the Trustees in their respective individual capacities, the Agent, and the Trustor under the Trust Agreement and agrees to look solely to the Equipment and its rights under Section 26 of this Agreement, and the sums due and to become due under the Lease and the other assets of the Trust Estate for the payment of the indebtedness in respect of the purchase price of the Equipment, together with interest thereon and all other payments and obligations as herein provided. However, nothing herein contained shall limit, restrict or impair the right of the Manufacturer to accelerate the payment of the indebtedness in respect of the purchase price of the Equipment upon a default hereunder or to exercise the remedies hereunder or otherwise realize upon the Equipment or the sums due or to become due under the Lease, including the right to proceed against the Lessee under the Lease or relieve the Trustee from the obligation which the Trustee hereby undertakes to enforce the Lease in accordance with its terms for the benefit of the Manufacturer or its assignee upon the written request of the Manufacturer or its assignee and the undertaking to indemnify the Trustee for all cost and expense in connection therewith.

SECTION 16. DEFAULTS.

15.1. In the event that any one or more of the following events of default shall occur and be continuing to-wit:

- (a) The Trustee or the Guarantor shall fail to pay in full any sum payable by the Trustee or the Guarantor, respectively, when payment thereof shall be due hereunder and such default shall continue for ten days; or

(b) The Trustee or the Guarantor shall fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Manufacturer for such compliance for more than 30 days after written notice from the Manufacturer specifying the default and demanding the same to be remedied; or

(c) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Guarantor, and all the obligations of the Guarantor under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings or otherwise given a status comparable to the obligations incurred by such a trustee or trustees within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) Any other proceedings shall be commenced by or against the Trustee or the Guarantor for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and all the obligations of the Trustee or the Guarantor, as the case may be, under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Trustee or the Guarantor or for the property of the Trustee or the Guarantor in connection with any such proceedings or otherwise given a status comparable to obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then at any time after the occurrence and during the continuance of such an event of default the Manufacturer may, upon written notice to the Trustee and the Guarantor and upon compliance with any legal requirements then in force and applicable to such action by the Manufacturer, but without prejudice to any rights of the Trustee

under the Lease with respect to any default thereunder, cause the Lease immediately upon such notice to terminate as to the Equipment and/or declare the entire indebtedness in respect of the purchase price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at the rate of 10% per annum, to the extent legally enforceable, and the Manufacturer shall thereupon be entitled, subject to the provisions and limitations of Section 14 hereof, to recover judgment for the entire unpaid balance of the indebtedness in respect of the purchase price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Guarantor wherever situated or out of property of the Trustee subject to the provisions and limitations of Section 14 hereof.

15.2. The Manufacturer may waive any such event of default and its consequences and rescind and annul any such declaration by notice to the Trustee and the Guarantor in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. With respect to any termination of the Lease by the Manufacturer, the aforesaid waiver, rescission and annulment shall be deemed made, and the Lease shall be deemed not to have been terminated, if the Trustee within 30 days after receiving written notice thereof as aforesaid, shall elect in writing to cure such default. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Trustee and the Guarantor that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

15.3. Any default hereunder shall be deemed cured and not continuing if the Trustee, prior to any sale by the Manufacturer of the Equipment as provided in Section 16.3, shall pay or cause to be paid to the Manufacturer the total unpaid balance of the indebtedness in respect of the purchase price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement.

## SECTION 16. REMEDIES.

16.1. If an event of default shall have occurred and be continuing as hereinbefore provided, then at any time after the entire indebtedness in respect of the purchase price of the Equipment shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the

Manufacturer may, upon such further notice, if any, as may be required for compliance with any mandatory requirement of law then in force and applicable to the action to be taken by the Manufacturer, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any Unit thereof, without liability to return to the Trustee or the Guarantor any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section 16 expressly provided, and may remove the same from possession and use of the Trustee and the Guarantor and for such purpose may enter upon the premises of the Trustee or the Guarantor or where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Trustee or the Guarantor, with or without process of law.

16.2. In case the Manufacturer shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Guarantor for the delivery of the Equipment to the Manufacturer, the Guarantor, shall at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be reasonably designated by the Manufacturer and shall there deliver the Equipment or cause it to be delivered to the Manufacturer; and, at the option of the Manufacturer, the Manufacturer may keep the Equipment on any of the lines of railroad or premises of the Guarantor, until the Manufacturer shall have leased, sold or otherwise disposed of the same, and for such purpose the Guarantor agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Manufacturer reasonably convenient. The agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Manufacturer shall be entitled to a decree against the Trustee or the Guarantor requiring specific performance hereof. The Trustee and the Guarantor hereby expressly waive any and all claims against the Manufacturer and its agent or agents for damages of whatever nature in connection with any retaking of any Unit of Equipment in any reasonable manner.

16.3. If an event of default shall have occurred and be continuing as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the purchase price of the Equipment shall have been declared immediately due and payable as hereinbefore provided, the Manufacturer (after retaking possession of the Equipment as hereinbefore in this Section provided) may at its election, upon written

notice to the Trustee as hereinafter provided, retain the Equipment as its own and make such disposition thereof as the Manufacturer shall deem fit, and in such event all rights of the Trustee in the Equipment will thereupon terminate and all payments made by the Trustee or the Guarantor may be retained by the Manufacturer as compensation for the use of the Equipment by the Trustee; or the Manufacturer with or without the retaking of possession thereof may, at its election, sell the Equipment, or any Unit thereof, free from any and all claims of the Trustee, or of any other party (including the Guarantor) claiming by, through or under the Trustee, at law or in equity, at public or private sale and with or without advertisement as the Manufacturer may determine; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Manufacturer in taking possession of, removing, storing and selling the Equipment, shall be credited to the amount due to the Manufacturer under the provisions of this Agreement; provided, however, that if the Trustee, within 20 days of receipt of notice of the Manufacturer's election to retain the Equipment for its own use, as herein provided, or prior to any sale by the Manufacturer of the Equipment, as herein provided, shall pay or cause to be paid to the Manufacturer the total unpaid balance of the indebtedness in respect of the purchase price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee. Written notice of the Manufacturer's election to retain the Equipment for its own use may be given to the Trustee by mail addressed to the Trustee as provided herein, at any time during a period of 30 days after the indebtedness in respect of the purchase price of the Equipment shall have been declared immediately due and payable as hereinbefore provided; and if no such notice shall have been given, the Manufacturer shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Section.

16.4. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Manufacturer may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Manufacturer may determine, provided that the Trustee and the Guarantor shall be given written notice of such sale not less than ten days prior thereto, by mail addressed as provided herein. If such sale shall be a private sale, it shall be subject to the rights of the Trustee and the Guarantor to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Manufacturer may bid for and

become the purchaser of the Equipment, or any Unit thereof, so offered for sale without accountability to the Trustee (except to the extent of surplus money received as hereinafter provided in this Section), and in payment of the purchase price therefor the Manufacturer shall be entitled to have credited on account thereof all sums due to the Manufacturer from the Trustee hereunder.

16.5. Each and every power and remedy hereby specifically given to the Manufacturer shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Manufacturer. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Manufacturer in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

16.6. All sums of money realized by the Manufacturer under the remedies herein provided shall be applied, first to the payment of the expenses and liabilities of the Manufacturer herein undertaken to be paid, second to the payment of interest on the indebtedness in respect of the purchase price of the Equipment accrued and unpaid and third to the payment of the indebtedness in respect of the purchase price of the Equipment. If, after applying as aforesaid all sums of money realized by the Manufacturer, there shall remain any amount due to it under the provisions of this Agreement, the Manufacturer may bring suit therefor and shall be entitled to recover a judgment therefor against the Trustee, subject to the provisions of Section 14 hereof. If, after applying as aforesaid all sums realized by the Manufacturer, there shall remain a surplus in the possession of the Manufacturer, such surplus shall be paid to the Trustee.

16.7. The Trustee, subject to the provisions of Section 14 hereof, will pay all reasonable expenses, including attorneys' fees, incurred by the Manufacturer in enforcing its remedies under the terms of this Agreement. In the event that the Manufacturer shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Manufacturer may recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

16.8. The foregoing provisions of this Section are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

SECTION 17. APPLICABLE STATE LAWS.

17.1. Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Trustee to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

17.2. Except as otherwise provided in this Agreement, the Trustee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any Unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Manufacturers' rights hereunder and any and all rights of redemption.

17.3. Nothing contained in this Section 17 or any other provision of this Agreement shall be deemed to make ineffective, or to modify or waive, the provisions and limitations of Section 14 hereof.

SECTION 18. EXTENSION NOT A WAIVER.

No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Manufacturer shall impair or affect the Manufacturer's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Trustee shall not otherwise alter or affect the Manufacturer's rights or the obligations of the Trustee or the Guarantor hereunder. The Manufacturer's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Trustee's obligations or the Manufacturer's rights hereunder with respect to any subsequent payments or defaults therein.

SECTION 19. RECORDING.

The Guarantor will cause this Agreement, the first assignment hereof and any supplements hereto and thereto to be filed, recorded or deposited and refiled, re-recorded or redeposited, if necessary, with the Interstate Commerce Commission, and otherwise

as may be required by law or reasonably requested by the Manufacturer for the purpose of proper protection, to the satisfaction of counsel for the Manufacturer of their title to the Equipment and their rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Guarantor will promptly furnish to the Manufacturer certificates or other evidences of such filing, recording or depositing, and an opinion or opinions of counsel for the Guarantor with respect thereto, satisfactory to the Manufacturer.

SECTION 20. PAYMENT OF EXPENSES.

The Agent will pay all reasonable costs and expenses, except the counsel fees of the Manufacturer, and including, without limitation, all taxes and other expenses, if any, incident to the printing or other duplicating, execution, acknowledgment and delivery of this Agreement, of the first assignment by the Manufacturer of this Agreement, of any instrument supplemental hereto or amendatory hereof, and of any certificate of the payment in full of the indebtedness in respect of the purchase price due hereunder. In addition, the Agent will pay all reasonable costs, charges and expenses of the first assignee of this Agreement and of any other parties acquiring interests in such first assignment, incurred in connection with such assignment including counsel fees, stamp and other taxes, if any, payable by such first assignee or payable by such other parties and payments to the Manufacturer by such first assignee and other parties. It is understood and agreed that the obligations of the Agent under this Section 20 are not subject to the limitations provided for in Section 14 hereof.

SECTION 21. NOTICE.

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Trustee or the Agent: Trustees under  
B.N. Trust No. 3 c/o United States Leasing International,  
Inc., 633 Battery Street, San Francisco, California 94111,

(b) to the Guarantor: Burlington Northern Building,  
St. Paul, Minnesota 55101

(c) to the Manufacturer:



(d) to any assignee of the Manufacturer, or of the Trustee or the Agent, at such address as may have been furnished in writing to the Trustee, the Agent or the Manufacturer, as the case may be, and to the Guarantor, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

#### SECTION 22. HEADINGS.

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

#### SECTION 23. EFFECT AND MODIFICATION OF AGREEMENTS.

This Agreement and the Schedules relating hereto, together with the Lease and the Railroad Equipment Reconstruction Agreement of even date herewith among the Manufacturer, the Trustee and the Guarantor, exclusively and completely state the rights and agreements of the Manufacturer, the Trustee, the Agent and the Guarantor with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Manufacturer, the Trustee, the Agent and the Guarantor. Neither the Trustee nor the Agent without the prior written consent of the Manufacturer, will consent to any amendment, modification, waiver or supplement to the Lease or, except in accordance with Section 14 thereof, cancel or terminate the Lease prior to the payment in full of the indebtedness in respect of the purchase price of the Equipment, together with interest thereon.

#### SECTION 24. LAW GOVERNING.

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of California; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

## SECTION 25. DEFINITIONS.

The term "Manufacturer", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, Burlington Equipment Company, and any successor or successors for the time being to the manufacturing properties and business of each respectively, and, after any such assignment, any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained and excluded from any assignment.

## SECTION 26. ASSIGNMENT OF LEASE.

As contemplated by the preamble hereto and the provisions of Section 9 hereof, to further secure the payment of the full amount of the indebtedness in respect to the purchase price of the Equipment, together with interest thereon, and all other payments as herein provided and for the performance of the Trustee's obligations herein contained, the Trustee hereby assigns, transfers and sets over unto the Manufacturer, and grants a security interest in, all the Trustee's right, title and interest, as Lessor under the Lease, together with all rights, powers and privileges, and all other benefits of the Trustee as Lessor under the Lease, including, without limitation, except as hereinafter provided, the immediate right to receive and collect all rentals and profits and other sums payable to or receivable by the Trustee under or pursuant to the provisions of the Lease insofar as the same cover or relate to the Equipment (excepting and reserving, however, the first installment of the Periodic Rent and that portion of the second, third and fourth installments of Periodic Rent equal to 2.38% of the purchase price, required to be paid by the Lessee in respect thereto pursuant to Section 2 of the Lease), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default under the Lease and to do any and all other things whatsoever which the Trustee, as Lessor, is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Trustee hereby irrevocably authorizes and empowers the Manufacturer, in its own name, or in the name of its nominee, or in the name of the Trustee, or as its attorneys, to ask, demand, sue for, collect and receive any and all sums to which the Trustee is or may become entitled under the Lease in respect of the Equipment, and to enforce compliance by the Lessee with all the terms and provisions of the Lease. This assignment being made only as security shall not subject the Manufacturer to, or transfer, or pass, or in any way affect or modify, the liability of the Trustee under the Lease, it being understood and agreed that notwithstanding

this assignment, or any subsequent assignment, all obligations of the Trustee to the Lessee under the Lease, shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Trustee. Further, the Trustee covenants and agrees that it will perform all its obligations to be performed under the terms of the Lease, and hereby irrevocably authorizes and empowers the Manufacturer, in its own name, or in the name of its nominee, or in the name of the Trustee, as its attorney, on the happening of any failure by the Trustee to perform or cause to be performed, any such obligation. Upon the full discharge and satisfaction of the full amount of the indebtedness in respect of the purchase price of the Equipment, together with interest thereon, and all other payments as herein provided and the performance of all of the Trustee's obligations herein contained, the assignment made hereby and all rights herein assigned to the Manufacturer shall cease and terminate, and all estate, right, title and interest of the Trustee in and to the Lease shall revert to the Trustee.

SECTION 27. EXECUTION.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by their officers or representatives, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

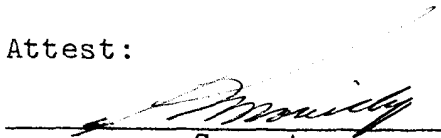
(Corporate Seal)

BURLINGTON EQUIPMENT COMPANY

Attest:

By

W K Bush  
Vice President

  
Secretary

D. E. Mundell and Ben Maushardt,  
Trustees under B.N. Trust No. 3

(Corporate Seal)

By Ben Maushardt  
Trustee as aforesaid  
UNITED STATES LEASING INTERNATIONAL,  
INC.

Attest:

James L. Miller  
Assistant Secretary

By Paul Roby  
Vice President

(Corporate Seal)

BURLINGTON NORTHERN, INC.

Attest:

Monica  
Secretary

By Frank H. Coyne  
Its Vice President, Finance

STATE OF MINNESOTA )  
 ) SS  
COUNTY OF RAMSEY )

On this 12<sup>th</sup> day of May, 1971, before me personally appeared W. R. Bush, to me personally known, who, being by me duly sworn, says that he is a \_\_\_\_\_ Vice President of BURLINGTON EQUIPMENT COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

My Commission Expires: J. H. McCARTHY,  
Notary Public, Ramsey County, Minn.  
My Commission Expires Jan. 6, 1975

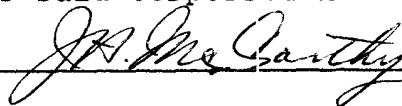


STATE OF MINNESOTA )  
 ) SS  
CITY OF RAMSEY )

On this 12<sup>th</sup> day of May, 1971, before me personally appeared FRANK H. COYNE, to me personally known, who being by me duly sworn, says that he is the VICE PRESIDENT of BURLINGTON NORTHERN, INC. that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

My Commission Expires: J. H. McCARTHY,  
Notary Public, Ramsey County, Minn.  
My Commission Expires Jan. 6, 1975



STATE OF CALIFORNIA

)  
) SS

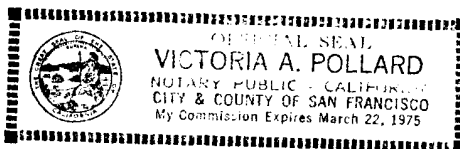
CITY AND COUNTY OF SAN FRANCISCO

On this 6<sup>th</sup> day of May, 1971, before me personally appeared BEN MAUSHARDT to me known to be one of the persons described in and who executed the foregoing instrument and he acknowledged that he executed the same as his free act and deed.

(SEAL)

Victoria A. Pollard

My Commission Expires:



STATE OF CALIFORNIA

)  
) SS

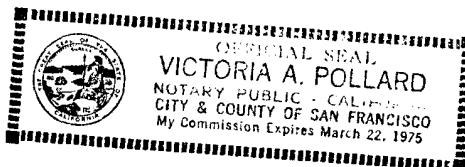
CITY AND COUNTY OF SAN FRANCISCO

On this 6<sup>th</sup> day of May, 1971, before me personally appeared DAVID A. WOOLSEY, to me personally known, who being by me duly sworn, says that he is a Vice President of UNITED STATES LEASING INTERNATIONAL, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

Victoria A. Pollard

My Commission Expires:



SCHEDULE A-1

NUMBER OF UNITS:	200 units
DESCRIPTION OF RECONSTRUCTED EQUIPMENT:	200 50-ton 40'6" box cars with 6'0" single door, reinforced steel underframe, cast steel trucks with friction bearings, steel sheathed with wood lining and steel rein- forced wood floor, bearing iden- tifying numbers BN 160300 to 160499, both inclusive.
COST PER CAR PRIOR TO RECONSTRUCTION:	\$480.00 per car
UNIT PRICE OF RECONSTRUCTED EQUIPMENT:	\$5,058.00 per car
TOTAL PRICE:	\$1,011,600.00 for all 200 cars.
OUTSIDE DELIVERY DATE:	March 1, 1972
DELIVER TO:	Burlington Northern Inc. as designated by the Railroad

B. N. Trust No. 3

SCHEDULE A-1

(to Conditional Sale Agreement)

SCHEDULE A-2

NUMBER OF UNITS:	250 units
DESCRIPTION OF RECONSTRUCTED EQUIPMENT:	250 50-ton 40'6" <u>box cars</u> with 6'0" single door, steel reinforced underframe, cast steel trucks with friction bearings, steel sheathed with wood lining and steel rein- forced wood floor, bearing iden- tifying numbers BN 160500 to 160749, both inclusive.
COST PER CAR PRIOR TO RECONSTRUCTION:	\$480.00 per car
UNIT PRICE OF RECONSTRUCTED EQUIPMENT:	\$5,058.00 per car
TOTAL PRICE	\$1,264,500.00 for all 250 units
OUTSIDE DELIVERY DATE:	March 1, 1972
DELIVER TO:	Burlington Northern Inc. as designated by the Railroad

B.N. Trust No. 3

SCHEDULE A-2

(to Conditional Sale Agreement)



SCHEDULE A-3

NUMBER OF UNITS:	200 units
DESCRIPTION OF RECONSTRUCTED EQUIPMENT:	200 50-ton 50'6" <u>box cars</u> with 8'0" single door, steel reinforced under- frame, cast steel trucks with friction bearings, steel sheathed with wood lining and steel reinforced wood floor, bearing identifying numbers BN 217000 to 217199, both inclusive.
COST PER CAR PRIOR TO RECONSTRUCTION:	\$550.00 per car
UNIT PRICE OF RECONSTRUCTED EQUIPMENT:	\$5,065.00 per car
TOTAL PRICE	\$1,013,000.00 for all 200 units
OUTSIDE DELIVERY DATE:	March 1, 1972
DELIVER TO:	Burlington Northern Inc. as designated by the Railroad

B.N. Trust No. 3

SCHEDULE A-3

(to Conditional Sale Agreement)

SCHEDULE A-4

NUMBER OF UNITS:	250 units
DESCRIPTION OF RECONSTRUCTED EQUIPMENT:	250 70-ton 52'6" solid end, solid bottom gondolas, steel reinforced underframe and superstructure, cast steel trucks with friction bearings, bearing identifying numbers BN 558000 to 558249, both inclusive.
COST PER CAR PRIOR TO RECONSTRUCTION:	\$700.00 per car
UNIT PRICE OF RECONSTRUCTED EQUIPMENT:	\$3,535.00 per car
TOTAL PRICE:	\$883,750.00 for all 250 units
OUTSIDE DELIVERY DATE:	March 1, 1972
DELIVER TO:	Burlington Northern Inc. as designated by the Railroad

B.N. Trust No. 3

SCHEDULE A-4

(to Conditional Sale Agreement)

SCHEDULE A-5

NUMBER OF UNITS:	50 units
DESCRIPTION OF RECONSTRUCTED EQUIPMENT:	50 70-ton 52'6" solid end, solid bottom, <u>gondolas</u> , steel reinforced underframe and superstructure, cast steel trucks with friction bearings and equipped with interior bulkheads, bearing identifying numbers BN 579950 to BN 579999, both inclusive.
COST PER CAR PRIOR TO RECONSTRUCTION:	\$700.00 per car
UNIT PRICE OF RECONSTRUCTED EQUIPMENT:	\$3,535.00 per car
TOTAL PRICE:	\$176,750.00 for all 50 units
OUTSIDE DELIVERY DATE:	March 1, 1972
DELIVER TO:	Burlington Northern Inc. as designated by the Railroad

B.N. Trust No. 3

SCHEDULE A-5

(to Conditional Sale Agreement)

SCHEDULE A-6

NUMBER OF UNITS:	100 units
DESCRIPTION OF RECONSTRUCTED EQUIPMENT:	100 70-ton 40'8" open top hopper cars, all welded design carbody with reinforced sides, cast steel trucks with friction bearings, bearing iden- tifying numbers BN 516300 to BN 516399, both inclusive.
COST PER CAR PRIOR TO RECONSTRUCTION:	\$620.00 per car
UNIT PRICE OF RECONSTRUCTED EQUIPMENT:	\$7,970.00 per car
TOTAL PRICE:	\$797,000.00 for all 100 units
OUTSIDE DELIVERY DATE:	March 1, 1972
DELIVER TO:	Burlington Northern Inc. as designated by the Railroad

B.N. Trust No. 3

SCHEDULE A-6

(to Conditional Sale Agreement)